IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 892 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASS. CO. LTD. - Appellant(s)
Versus
KOLI NATHA MERU & 2 - Defendant(s)

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Appearance :

MR HASMUKH THAKKER for Appellant(s) : 1,
MR VIREN G DAVE for MR YOGESH S LAKHANI for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 19/12/2006

ORAL JUDGMENT

1. The appellant New Indian Assurance Co. Ltd., has challenged the judgment and award dated 20th April, 1991 made by MACT, Porbandar in MACP No. 5 of 1990, whereby it

has directed the appellant and respondent no. 3 herein to pay a sum of Rs.37,300=00 together with interest at the rate of 12% from the date of petition till realization and proportionate costs.

2. The facts of the case can be stated as under :-

2.1. The claimant's mother had expired about ten days prior to the date of the accident, therefore, he wanted to perform obsequiously ceremony and for that purpose, he need to transfer certain food articles like jaggery, oil, wheat etc., and also cot, mattress to a place called Uttada. He, therefore, requested his employer to give him on hire the loading rickshaw. He paid Rs.20=00 as hire charges. While the vehicle was driven by respondent no. 3, who also happened to be owner of the said loading rickshaw bearing registration no. GTW 8320, when they reached near bridge on Bhadar river another rickshaw came from the opposite direction and it collided with the rickshaw in which the claimant was travelling. The other rickshaw was being driven by respondent no. 2 who also happened to be the owner of the said rickshaw bearing registration No. GTP 8592. As a result of the same the claimant received serious injuries. He immediately went to the Government Hospital for treatment. However, on the following day the ceremony was fixed and, therefore, he

sought discharge from the hospital to perform the ceremony. According to him because of the injuries which included fracture also, he could not do his usual work for a period of about six months. He had to spend substantial amount for treatment and also for the incidental items. On the basis of the aforesaid, he preferred claim of Rs.50,000=00.

3. The claim was resisted by the present appellant by filing written statement at Exh. 21. In the claim proceedings the appellant was respondent no. 4. Respondent no. 4 United India Assurance Co. Ltd., was joined as the insurer of vehicle bearing registration no. GTP 8592. However, it was contended by the said insurance company that the offending vehicle, namely GTP 8592 was not insured with it, hence, United India Assurance Co. Ltd., was deleted from the proceedings and the present appellant became respondent no. 3. It appears from the record of the case that so far as the petition is concerned, it is stated that the other vehicle which collided with the vehicle in which the claimant was travelling was bearing registration No. GTP 8593. However, the United India Assurance Co. Ltd., contended in the written statement that the vehicle bearing registration no. GTP 8592 was never insured with it and,

therefore, the claimant submitted an application for deleting the said insurance company. It is is very strange that neither the Tribunal nor the learned advocate appearing for the claimant has taken any care to find out what was the correct number of the offending vehicle and when the United India Assurance Co. Ltd., was deleted from the proceedings which was the other insurance company with which the said vehicle namely GTP 8592 (GTP 8593) was insured. Further it appears that on the basis of the material produced before it, the Tribunal made an award in the terms stated above. However, indifference on the part of the Tribunal is very eloquent as can be seen from the findings given in the judgment. In para 6 of the judgment, while deciding issue no. 1 on the aspect of negligence, it has held that the driver of rickshaw bearing registration no. GTP 8592 drove the vehicle in speed and dashed it with the rickshaw in which the claimant was travelling i.e. GTW 8320, This fact also stood adequately corroborated by FIR. Therefore, according to the Tribunal, it was very clear that the accident occurred due to rash and negligent driving of respondent no. 2 namely, Koli Manu alias Bettukbhai. In the very next paragraph it has been observed by the Tribunal that considering the foregoing discussion, it appears that the facts discussed therein

adequately proved that the driver and owner of the vehicle bearing registration no. GTW 8320 was driving the vehicle in rash and negligent manner which caused the accident. In the operative portion also the Tribunal has passed direction on the appellant and respondent no. 3. This is a pathetic state of affair and this shows in what careless manner, the proceedings have been conducted by the learned advocate for the claimant and in what careless manner the Tribunal has delivered the judgment. Both of them deserve to be criticized. The learned advocate has neither tried to bring the real registration number of the other vehicle i.e., the vehicle which dashed against the vehicle in which the claimant was travelling nor did he try to find out which was the correct insurance company of this vehicle and it has not even taken care to make any application to the Tribunal to call upon the concerned vehicle owners to reveal the names of the insurance company. The Tribunal also owed some responsibility to ascertain the correct facts and give proper judgment. It has neither made any effort to find out the correct facts nor it has given proper judgment. In view of the same, this judgment and award deserves to be quashed and set aside and it is hereby quashed and set aside. The case is remanded to the concerned Tribunal to enable the parties to adduce proper

evidence in support of their respective cases. The claimant will be at liberty to join correct insurance company of the other offending vehicle in the proceedings. It is also clarified that the material which is already on record shall remain as it is and the Tribunal on the basis of the same as well as by additional material which may be produced on record by the parties decide the claim petition afresh. The exercise to be completed on or before 30th June, 2007. It is further directed that the Tribunal shall not disburse the amount already deposited by the appellant till the proceedings are over. The Registry is directed to transmit the record as well as the amount deposited by the appellant forthwith i.e., upon the placement of the judgment on the file of the First Appeal, to the Tribunal.

In the result the appeal is disposed of accordingly.

R & P if any, to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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